

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Damon L. Campbell,

5 Plaintiff,

6 v.

7 Dean Willett, et al.,

8 Defendants.

Case No. 2:21-cv-00912-APG-BNW

Order

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10 Before the Court is *pro se* Plaintiff Damon Campbell's motion for appointment of
11 counsel. ECF No. 31. The Defendants oppose at ECF No. 37. Plaintiff replied at ECF No. 38.
12 Because the Court finds that exceptional circumstances exist, it grants Plaintiff's motion.

13 **I. Background.**

14 This Court previously ruled that Mr. Campbell could proceed on his Fourteenth
15 Amendment Due Process claim against Willett and Brooks based on allegations that he was
16 precluded from presenting witnesses and documentary evidence at his disciplinary hearing.

17 Plaintiff now moves for appointment of counsel. ECF No. 31. Plaintiff asserts that the
18 issues are complex, that his previous motions were denied for failure to cite legal authority, that
19 being imprisoned precludes him from properly investigating the case and from obtaining certain
20 evidence that would otherwise be provided to an attorney, and that he will need representation for
21 a jury trial. *Id.*

22 The Defendants argue there are no exceptional circumstances in this case and that, as a
23 result, counsel should not be appointed. Defendants argue this case involves a single claim
24 against two defendants and that the Court has already explained to Mr. Campbell the law
25 surrounding the claim. As a result, they argue he should be able to proceed with the case *pro se*.
26 Defendants also argue that Mr. Campbell failed to address the merits of his case, which is one of
27 the factors the Court must consider before appointing counsel. Lastly, Defendants argue that
28

1 while Mr. Campbell may not have cited legal authority in previous motions, he has done so in the
2 instant one.

3 Mr. Campbell's reply does not add much to his previous arguments, other than to state
4 that he is currently locked up 22-hours a day with little access to the law library.

5 **II. Legal Standard**

6 Courts have authority to request that an attorney represent any person unable to afford
7 counsel. 28 U.S.C. § 1915(e)(1). The decision to appoint counsel is within the sound discretion of
8 the district court and requires a showing of exceptional circumstances. *Agyeman v. Corrections*
9 *Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). To determine whether exceptional
10 circumstances exist, courts consider the likelihood that the plaintiff will succeed on the merits and
11 the plaintiff's ability to articulate his claims "in light of the complexity of the legal issues
12 involved." *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)). Neither
13 factor is dispositive, and both must be viewed together. *Wilborn*, 789 F.2d at 1331.

14 Civil litigants do not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*,
15 654 F.2d 1349, 1353 (9th Cir. 1981). In certain circumstances, however, federal courts are empowered
16 to request that an attorney represent an indigent civil litigant. For example, courts have discretion, under
17 28 U.S.C. § 1915(e)(1), to "request" that an attorney represent indigent civil litigants upon a showing of
18 "exceptional circumstances." *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir.
19 2004).

20 To determine whether the "exceptional circumstances" necessary for appointment of counsel are
21 present, the court evaluates (1) the likelihood of plaintiff's success on the merits and (2) the plaintiff's
22 ability to articulate his claim *pro se* "in light of the complexity of the legal issues involved." *Agyeman*,
23 390 F.3d at 1103 (quoting *Wilborn*, 789 F.2d at 1331). A court may find that "exceptional
24 circumstances" exist if a claim is either factually or legally complex. *See, e.g., McElyea v. Babbitt*, 833
25 F.2d 196, 200 n.3 (9th Cir. 1987) (per curiam) (suggesting that a plaintiff's claim concerning the
26 provision of religious books in prison raises "complicated constitutional issues").
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1 **A. Likelihood of Success on the Merits**

2 Here, Mr. Campbell's Fourteenth Amendment due process claim has a likelihood of success
3 on the merits because it survived the Court's screening process. ECF No. 7.

4 "The Ninth Circuit has indicated that the articulation of a cognizable claim for relief may
5 itself be sufficient to satisfy the 'merit' analysis on a motion for appointment of counsel." *Turner v.*
6 *Riaz*, No. 216CV0969MCEACP, 2018 WL 5962726, at *4 (E.D. Cal. Nov. 14, 2018). This factor
7 therefore weighs in favor of appointing counsel.

8 The Court agrees with Defendants that Mr. Campbell did not address the likelihood of success
9 of his claim. But that is further evidence that Mr. Campbell cannot properly articulate his claims—
10 especially given the fact that he failed to do so again in his reply despite Defendants pointing it out in
11 their opposition.

12 **B. Ability to Articulate His Claim *Pro Se***

13 For the reasons discussed below, the Court will exercise its discretion to appoint counsel for
14 Mr. Campbell.

15 First, the Court finds that Mr. Campbell is having difficulty understanding the difference
16 between re-litigating the underlying disciplinary proceeding and a due process violation. *See, e.g.*,
17 ECF No. 35.

18 Second, the Court finds that Mr. Campbell fails to understand the legal process given the
19 nature of his request at ECF No. 26 (motion to recuse Attorney General's "Legal Researcher"). Mr.
20 Campbell's failure to provide legal authority for his request is additional evidence that he will have
21 difficulties articulating his claims *pro se*.

22 Third, the Court recognizes that appointing counsel in this case would allow the proceedings
23 to "undoubtedly proceed more efficiently and effectively." *Johnson v. California*, 207 F.3d 650, 656
24 (9th Cir. 2000) (per curiam).

25 Lastly, the Court notes that this is a single-issue case. Nevertheless, it is not necessarily a
26 simple case to Mr. Campbell, as evidenced by his confusion about the parameters of discovery. In
27 fact, this Court has already denied a prior motion to compel on this basis. ECF No. 35. Additionally,
28 certain aspects of his reply call into question whether he understands the parameters of his claim. In

1 that vein, the appointment of counsel would help Mr. Campbell articulate his claim and proceed with
2 discovery.

3 Accordingly, these circumstances warrant the appointment of *pro bono* counsel in this case.

4 **II. Conclusion and Order**

5 Because the Court will exercise its discretion to appoint counsel and grant Mr. Campbell's
6 motion for appointment of counsel, it will refer the case to the Court's Pro Bono Program to attempt
7 to find an attorney to accept Plaintiff's case. Mr. Campbell should be aware that the Court has no
8 authority to require attorneys to represent indigent litigants in civil cases under 28 U.S.C. § 1915(d).
9 *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 298 (1989). Rather, when a
10 court "appoints" an attorney, it can only do so if the attorney voluntarily accepts the assignment. *Id.*
11 Additionally, **Mr. Campbell is reminded that unless and until counsel is appointed, he is still**
12 **responsible for complying with all deadlines in his case.** If counsel is found, Mr. Campbell will be
13 contacted by counsel.

14 **IT IS THEREFORE ORDERED** that Plaintiff's motion for appointment of counsel (ECF
15 No. 31) is GRANTED.

16 **IT IS FURTHER ORDERED** that this case is referred to the Pro Bono Program adopted in
17 Second Amended General Order 2019-07 for the purpose of screening for financial eligibility (if
18 necessary) and identifying counsel willing to be appointed as *pro bono* counsel for Plaintiff. The
19 scope of appointment shall include the discovery phase through the termination of the case—whether
20 at the dispositive motion phase or trial. Plaintiff is reminded that he must comply with all deadlines
21 currently set in his case, and there is no guarantee that counsel will be appointed.

22 **IT IS FURTHER ORDERED** that the Clerk of Court must forward this order to the Pro
23 Bono Liaison.

24 **IT IS FURTHER ORDERED** that the hearing set for November 15, 2022 is vacated.

25 DATED: November 7, 2022.

26 
27 BREND A WEKSLER
28 UNITED STATES MAGISTRATE JUDGE